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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/862,905

05/22/2001

Gary P. Kasner

1915.14US03

9685

24113

7590

11/14/2007

PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A.

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EXAMINER

SAFAVI, MICHAEL

ART UNIT

PAPER NUMBER

3637

MAIL DATE

DELIVERY MODE

11/14/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/862,905	<b>Applicant(s)</b> KASNER ET AL.	
	<b>Examiner</b> M. Safavi	<b>Art Unit</b> 3637	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 March 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 16,17,21-34,49,51,52,54,56 and 58-60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16,17,21-34,49,51,52,54,56 and 58-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Terminal Disclaimer***

The terminal disclaimer filed on March 13, 2007 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Reissue Patent No. RE37,388 has been reviewed and is accepted. The terminal disclaimer has been recorded.

***Declaration***

The reissue oath/declaration filed March 13, 2007 is defective (see 37 CFR 1.175 and MPEP § 1414) because of the following:

- 1) The reissue oath/declaration filed March 13, 2007 with this application is defective because it fails to appropriately state that applicant believes the original patent to be either wholly or partly inoperative or invalid by reason of a defective specification or drawing, or by reason of the patentee claiming either more or less than the patentee had the right to claim in the patent. See M.P.E.P. 1414(I).
  
- 2) The reissue oath/declaration filed March 13, 2007 is defective because it fails to appropriately identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414.

The reissue oath/declaration filed March 13, 2007 does not clearly state an error within the original Patent. Language directed to "e.g., a claim in non-Jepson format reciting, in part, a recessed area in a top panel of a roof ventilator, the recessed area being non-linear in cross section, which is broader in scope than, e.g., claim 9, which

recites a recessed area having a pair of side walls traversing a generally oval-shaped path", does not clearly establish the error upon which the instant reissue application is based.

M.P.E.P. 1414(II)(C):

Any error in the claims must be identified by reference to the specific claim(s) and the specific claim language wherein lies the error. A statement of " ... failure to include a claim directed to ..." and then presenting a newly added claim, would not be considered a sufficient " error" statement since applicant has not pointed out what the other claims lacked that the newly added claim has, or vice versa. Such a statement would be no better than saying in the reissue oath or declaration that " this application is being filed to correct errors in the patent which may be noted from the change made by adding new claim 10." In both cases, the error has not been identified.

3) The reissue oath/declaration filed March 13, 2007 is defective because it fails to identify all amendment by which the claims of the patent have been changed. See 37 CFR 1.63(b)(2) and MPEP § 1414.

4) The reissue oath/declaration filed with this application is defective (see 37 CFR 1.175 and MPEP § 1414) because of the following: The reissue declaration filed March 13, 2007 fails to state that the person making the oath or declaration acknowledges the

duty to disclose to the Office all information known to the person to be material to patentability as defined in § 1.56.

***Claim Rejections - 35 USC § 251***

Claims 16, 17, 21-34, 49, 51, 52, 54, 56, and 58-60 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

Applicant is further reminded of the continuing obligation under 37 CFR 1.56, to timely apprise the Office of any information which is material to patentability of the claims under consideration in this reissue application.

These obligations rest with each individual associated with the filing and prosecution of this application for reissue. See also MPEP §§ 1404, 1442.01 and 1442.04.

Applicant is notified that any subsequent amendment to the specification and/or claims must comply with 37 CFR 1.173(b).

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (571) 272-7046. The examiner can normally be reached on Mon.-Thur., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



**MICHAEL SAFAVI**  
**PRIMARY EXAMINER**  
**ART UNIT 354**

M. Safavi  
November 08, 2007